

Unofficial Translation
With the courtesy of the Foreign Banks' Association
This translation is for the convenience of those unfamiliar with the Thai language
Please refer to the Thai text for the official version

BANK OF THAILAND

11 May 2005

To Managers

*
All Commercial Banks

No.: PhorGorSor.(11) Wor. 34/2548 Re: Dispatch of the Notification of the Bank of Thailand Re: Permission for Commercial Banks to Conduct Hire Purchase and Leasing Business

1. Objective of the Circulation Letter

To dispatch the Notification of the Bank of Thailand Re: Permission for Commercial Banks to Conduct Hire Purchase and Leasing Business

2. Royal Gazette Issue

General Issue, No. 122, Special Section 37 Ngor, dated 9th May 2005

3. Scope of Application

All commercial banks according to the Commercial Banking Act, except the international banking facilities

4. Essence of the Notification

4.1 The Notification of the Bank of Thailand Re: Permission for Commercial Banks to Conduct Hire Purchase and Leasing Business dated 27 September 2004 is revoked.

4.2 The provision related to insurance coverage for hire purchased or leased property is revised to state that commercial banks must attach importance to the mitigation of risk of damages that can occur to their hire purchased or leased property and that they should arrange for insurance coverage for the said property with the commercial banks as beneficiaries, as necessary and appropriate.

4.3 The provision for retail banks regarding calculation of the maximum amount that a retail bank may invest in hire purchased or leased property to any single person is added to state that the investment in the hired purchase or leased property shall be treated as if it is a credit

* Excluding BIBF

extension. The retail bank must count the exposure to any person arising from granting of credits, investment in business, and incurring of contingent liabilities, to be included with the exposure from hire purchase, leasing, private repurchase agreement, factoring of that individual person. The total exposure, at the end of any given day, must not exceed the single lending limit set forth in the Notification of the Ministry of Finance dated 23 January 2004, as well as any further related regulations that the Bank of Thailand shall duly prescribe.

5. Effective Date

This Notification shall be in effect from 10 May 2005 onwards.

With regards

(Mrs. Tongurai Limpiti)
Senior Director, Financial Institutions Policy Group
for Governor

Enclosure : Notification of the Bank of Thailand Re: Permission for Commercial Banks to Conduct Hire Purchase and Leasing Business dated 7 April 2005

Financial Institutions Strategy Department

Tel: 0-2283-6938, 0-2283-5839

Note [] The BOT will arrange a clarification meeting onat....
 [X] No clarification meeting will be arranged

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Notification of the Bank of Thailand

Re: Permission for Commercial Banks to Conduct Hire Purchase and Leasing Business

1. Objective of the Notification

To encourage commercial banks to offer more financial services, particularly, as a source of funds for those who want to purchase a property but do not have enough funding, or as a source of working capital for business entrepreneurs, the Bank of Thailand thereby permits commercial banks to conduct hire purchase and leasing business.

2. Statutory Power

By virtue of Article 9 bis of the Commercial Banking Act B.E. 2505, as amended by the Commercial Banking Act (No.2) B.E.2522, the Bank of Thailand hereby permits commercial banks to conduct hire purchase and leasing business according to the rules specified in this Notification.

3. Scope of Application

This Notification is applicable for all commercial banks according to the Commercial Banking Act, except the international banking facilities.

4. Content

4.1 The Notification of the Bank of Thailand Re: Permission for Commercial Banks to Conduct Hire Purchase and Leasing Business dated 27 September 2004 shall be revoked.

4.2 Principle

4.2.1 The Bank of Thailand permits commercial banks to conduct hire purchase and leasing business in accordance with the policy to encourage commercial banks to offer more financial services. Nevertheless, the Bank of Thailand does not want commercial banks to conduct hire purchase and leasing business in order to avoid the compliance of other laws and

regulations or to conduct the business for the purpose of creative accounting. For example, the case where a property owner sells his property to a commercial bank and leases that property back from the commercial bank (Sale and Lease Back), for which the commercial bank appraises the value of that property higher than the actual value in order to help benefit the property owner. On the other hand, a commercial bank may own a property and undertake sale and lease back transaction by selling the property to a lessor at the price higher than the actual value in order to take accounting profit or to inappropriately value the property.

4.2.2 The Bank of Thailand aims for commercial banks to have their own risk management systems. Commercial banks must have good knowledge and understanding of the nature of transactions, property to be hired or leased, as well as the risks involved. The commercial banks must have policies and procedures for conducting the business, and have appropriate operational systems, risk management systems, and internal control systems that can support the business.

4.2.3 Since the hire purchase and leasing business possesses the same risks as to loan extensions, commercial banks must emphasize on risk management and credit quality, and must not concentrate only on increasing the quantity of credits. Commercial banks who wish to conduct such business must have in place the risk management systems, the processes of credit and property analysis, debt collection, as well as data processing and collections.

4.3 Rules and Conditions

4.3.1 In this Notification

“property” means movable property in accordance with the Civil and Commercial Code that a commercial bank conducts the business with.

“leasing” means a lease of property in the form of a financial lease contract, for which a commercial bank arranges to find a property according to lessee’s need from suppliers, distributors, or any persons, or from confiscation of other lessee’s property, for the lessee to utilize the property. The lessee is obligated to maintain and repair the leased property. The lessee must not be allowed to unilaterally cancel the agreement before expiry date. When the contract expires, the right to purchase the leased property depends on the conditions agreed upon by the commercial bank and the lessee.

“hire purchase” means a hire purchase in accordance with the Civil and Commercial Code.

“cash price” means the market value of a property as of the contract date.

“investment” means the sum of cash price and other expenses that a commercial bank must pay in order to acquire a property such as transportation, tax, insurance premium, and etc. The investment must be amortized in proportional with the lessee’s contractual payment.

“contractual payment” means the amount of money that a lessee must periodically pay to a commercial bank, comprising of the principal and interest.

“upfront payment” means the amount of money that a lessee must pay at the time of contract as a part of the amount to be paid in accordance with the contract of hire.

“contract” means a hire purchase contract or a leasing contract.

“lessor” means a person who conducts the hire purchase or leasing business.

“lessee” means a person who hires purchase or leases a property.

“the Minister” means the Minister of Finance

4.3.2 The Bank of Thailand permits commercial banks to conduct hire purchase and leasing business. The commercial banks who wish to conduct the hire purchase and leasing business must have the qualifications and comply with the rules specified as follows:

1) have good financial conditions and operating performance, be able to set provisions and maintain the capital adequacy ratio of no less than the requirement of the Bank of Thailand, and be able to maintain any other financial ratios that the Bank of Thailand specifically stipulates.

2) cooperate with the authorities’ policy regarding the implementation of the Financial Sector Master Plan , Commercial banks that have more than 1 form of deposit taking entities in the same business group must submit plans for acquisition, merger, sale of business, return of a license, and transfer of assets and liabilities from other financial institutions in order to comply with the One Presence policy as specified by the Bank of Thailand.

3) have a written business plan for the hire purchase and leasing business. The plan must be approved by the board of directors of commercial banks to be used as a framework for conducting the business. The plan must also be ready to be examined by the Bank of Thailand’s examiners. Such plan should contain the following essence:

(1) policy and procedure for business operation

(2) details of management system, risk management system, internal control system, and accounting system

(3) details of risk management system must at least include:

- credit analysis system, procedures in setting customer's line of credit, procedures in setting upfront payment to be paid by a customer by taking into consideration quality of the customer and type of property to be hired or leased.

- policy regarding the type of hired or leased property, the maximum investment in each type of property and the investment in the overall property by taking into consideration various risk factors such as secondary market for sale of property and obsolescence of the property.

- procedures in property management, including the acquisition of property, the management of confiscated property, the monitoring and inspection of property, the valuation of property, the valuation of residual value of property. In valuation of such property, commercial banks can use either independent appraisers or internal appraisers. Commercial banks must comply with the codes of conduct and standard practices that are generally accepted in the profession of property valuation.

- procedures in debt collection
- procedures in data collection and reporting

(4) Commercial banks who wish to conduct the hire purchase and leasing business must submit a letter of intent approved by the board of director of the commercial banks to show the intention to conduct such business to the Bank of Thailand. Commercial banks who have to comply with the One Presence Policy of the Financial Sector Master Plan must certify in the letter of intent that they will comply with the plan, which will be approved by the Minister, to acquire, merge, sell a business, return of a license, transfer of assets and liabilities from other financial institutions in compliance with the One Presence policy, as well as any other conditions that the Minister may impose in the approval.

In this respect, the commercial banks shall submit the letter of intent to the Supervision Group, the Bank of Thailand. Once the commercial banks have submitted the letter of intent, the permission shall be in effect after 30 days from the submission date, except that the Bank of Thailand has any objection or requests, in writing, for clarification. In the case where the Bank of Thailand has any objection or request for clarification, the commercial banks shall be permitted to conduct the business when it is approved by the Bank of Thailand.

4.3.3 Commercial banks must prepare at least 2 written contracts of hire purchase or leasing with lessee and give the lessee one copy of the contract. The contract must specify the details depending upon each type of contract as follows:

- 1) type, nature, and useful life of the property

- 2) cash price, investment, upfront payment, contractual payment, and interest rate used to calculate return
- 3) details and methods used in calculating return and contractual payment
- 4) duration of contract
- 5) methods used in delivery, inspection, installation, moving, loss, damage, defect, maintenance, and use of property
- 6) insurance coverage, compensation according to an insurance policy, guarantee
- 7) conditions and rights of a lessee to prepay the contractual payment (if any)
- 8) expenses and fines in various cases
- 9) conditions to cancel the contract, termination of contract, and confiscation of hired or leased property
- 10) conditions to transfer property ownership to a lessee
- 11) conditions for a lessee to re-lease or purchase the whole or part of the property at the agreed upon price.

In case that a commercial bank wishes to modify any terms, fees, expenses, fines, calculation method, or any conditions of the contract, the commercial bank must comply with the Notification of the Bank of Thailand Re: Rules on Service Provision to Customers, Disclosure and Collection of Fees of Commercial Banks, including any related notification and circulation letters to be modified in the future.

In addition, as contracts for hire purchase of cars and motorcycles and contracts for hire purchase of electrical appliances are under control by the Notification of the Committee on Contracts Re: Specifying Contracts for Hire Purchase of Cars and Motorcycles to be Under Control B.E. 2543 and the Notification of the Committee on Contracts Re: Specifying Contracts for Hire Purchase of Electrical Appliances to be Under Control B.E. 2544, therefore in conducting hire purchase of cars and motorcycles and hire purchase of electrical appliances, the commercial banks must prepare the hire purchase contract in accordance with the rules specified by the Committee on Contracts.

4.3.4 Commercial banks must attach importance to the mitigation of risk of damages that can occur to their hire purchased or leased property, and should arrange for insurance coverage for the said property with the commercial banks as beneficiaries, **as necessary and appropriate.** In arranging for the insurance, the commercial bank must take into consideration type of property, investment in the property, probability of damage, cost of repairs, and etc.

4.3.5 In calculating the maximum amount that a commercial bank can invest in the hired purchase or leased property to each individual person, the investment in the hired purchase or leased property shall be treated as if it is a credit extension. The commercial bank must count the exposure to any person arising from granting of credits, investment in business, and incurring of contingent liabilities, to be included with the exposure from hire purchase, leasing, private repurchase agreement, factoring, and securities borrowing and lending of that individual person. The total exposure must not exceed 25 percent of tier 1 capital of the commercial bank at the end of any given day.

In the case of retail banks, in calculating the maximum amount that a retail bank can invest in the hired purchase or leased property to each individual person, the investment in the hired purchase or leased property shall be treated as if it is a credit extension. The retail bank must count the exposure to any person arising from granting of credits, investment in business, and incurring of contingent liabilities, to be included with the exposure from hire purchase, leasing, private repurchase agreement, factoring of that individual person. The total exposure, at the end of any given day, must not exceed the single lending limit set forth in the Notification of the Ministry of Finance dated 23 January 2004, i.e. loans with collateral granted to each retail person are limited to 1 percent of the retail bank's tier-one capital, while loans granted to each SME are limited to 10 percent of the retail bank's tier-one capital, as well as any further related regulations that the Bank of Thailand shall duly prescribe.

4.3.6 In calculating the risk weight of debtor under the contract for the purpose of maintaining capital adequacy ratio, classification of debtors under the contract and provisioning, as well as cessation of accrual of interest income from hire purchase and leasing business, a commercial bank shall act as if it is credit extensions and comply with the rules specified by the Bank of Thailand.

4.3.7 In case that a commercial bank receives the property back due to the termination of contract or the confiscation from a lessee, the commercial bank must sell or re-lease that property within 6 months from the contract termination date or confiscated date. If, after such period, the commercial bank can not sell or re-lease that property, the commercial bank must set provision for that property, by phasing in the provision of at least 25 percent of that property value as of the contract termination date or confiscated date, for every 6-month period.

If the received property turns out to be assets classified as loss or doubtful of loss in accordance with the Notification of the Bank of Thailand Re: Worthless or Irrecoverable Assets and Doubtful Assets which may be Worthless or Irrecoverable of Commercial Banks, the commercial bank must write that property off or set full provisions immediately in accordance with the Notification. In case that the property is classified as doubtful of loss, the commercial bank must set provisions at the higher amount, comparing between the phased-in provisioning that has been provisioned, as explained in the first paragraph, and the amount to be provisioned for assets classified as doubtful of loss in accordance with the Notification.

If the received property has its useful life of less than 2 years left and the commercial bank cannot sell or re-lease that property within 6 months from the contract termination date or confiscated date, the commercial bank must fully set provision for that property, immediately after the 6 -month period from the contract termination date or confiscated date.

4.3.8 Once the contract expires and a lessee exercises the right to purchase a property in accordance with the conditions prescribed in the contract, the commercial bank must transfer the right of the ownership of the property to the lessee without delay.

4.3.9 A commercial bank may conduct the Sale and Lease Back transaction by complying with the following conditions:

- 1) the counterparty must be a juristic person
- 2) property in the Sale and Lease Back transaction must not be personal cars, which can carry 7 passengers or less, automobile which can carry more than 7 passengers but no more than 12 passengers, or personal trucks with the weight of no more than 1,600 kilograms that is not used as vehicles for transportation business according to the Law regarding Land Transportation.

- 3) the commercial bank must use external independent appraisers to value the property in the Sale and Lease Back transaction , so as to prevent any preferential benefits to the counter party for the purpose of creative accounting such as purchasing the property at the price higher than actual value.

4.3.10 A commercial bank must strictly comply with associated accounting standards, laws and regulations.

4.3.11 A commercial bank must retain related information and documents for the Bank of Thailand to inspect at all times.

4.3.12 A commercial bank must not do the following:

- arrange for property without entering into a contract with anyone, or arrange for property at the price higher than market price or the lowest price possible

- enter into a juristic act with any person, causing burden to the leased property, except in the necessary case, which must receive approval from the Bank of Thailand, for which, the Bank of Thailand may specify any conditions.

- allow a lessee to sublease the property, except in the case where the lessee's normal business is to lease properties .

4.3.13 The Bank of Thailand has the authority to stop or revoke the permission to conduct the hire purchase and leasing business in the following cases:

1) a commercial bank violates or does not comply with the rules and conditions as specified above;

2) a commercial bank does not act in accordance with the plan, as approved by the Minister, to acquire, merge, sell a business, return of a license, transfer of assets and liabilities from other financial institutions to be in line with the One Presence policy;

3) a commercial bank does not comply with the conditions stipulated by the Minister in approving the plan to acquire, merge, sell a business, return of a license, transfer of assets and liabilities from other financial institutions to be in line with the One Presence policy;

4) other cases that the Bank of Thailand considers public security or interest are affected.

5. Effective Date

This notification shall come into effect on the day after the announcement in the Royal Gazette onwards.

Given on 7th April 2005

(M.R. Pridiyathorn Devakula)

Governor

The Bank of Thailand